



International Criminal Court
Office of the Prosecutor
2500 CM The Hague
The Netherlands

Berlin and Bogotá, 12 May 2021

Re: Including allegations of police violence in the Colombian preliminary examination

Dear Prosecutor Fatou Bensouda,
Dear Dear Rod Rastan, dear Eugenia Valenzuela,

Since 28 April 2021 protests erupted in Colombia as social dissatisfaction reached its highest point with the introduction of a tax reform by the government of President Iván Duque. The protests, which have been mainly peaceful, are being met with disproportionate violence by the Colombian police against protestors, mostly young men and women, including minors. As a result, by 8 May we have received reports of at least 47 murders –39 of which have been allegedly by the police–, 12 cases of sexual assault, 548 missing persons, and 963 illegal detentions.¹

Ample evidence on the brutal response of the police –oftentimes without proper identification or even dressed in civilian clothes²– has been taken by protestors and human rights organizations in videos and streamed in social media. These show that the police have been acting in violation of their constitutional, legal and international law duties by, among others, shooting protestors with rubber bullets, fire weapons, or shooting tear gas canisters at a very close distance. Of particular concern are the actions of the Mobile Anti-Disturbance Squadron (*Escuadrón Mobil Anti-Disturbios – ESMAD*), a police unit in charge of controlling riots and disturbances to public order during protests. In recent days, members of the ESMAD have allegedly perpetrated 15 out of the 39 reported murders committed in the context of protests.³

While the escalation in the levels of violence from the Colombian police has reached unprecedented levels, these are not isolated incidents. In the 2018 communication sent by ECCHR and CAJAR to your office, we pointed at the excessive force used by the ESMAD against human rights defenders in the context of social protests in Colombia since 2013. Since then, the violence has only continued to increase. In demonstrations on 9 September 2020 and November 2019 at least 17 young men were allegedly killed by the police, including ESMAD members. More generally, NGO Temblores has reported that between 2017 and 2019 there were 289 murders, 39613 cases of physical violence, and 139 cases of sexual violence

¹ Temblores ONG and Instituto de Estudios para el Desarrollo y la Paz (INDEPAZ), *Comunicado Conjunto Temblores Ong – Indepaz*, 9 May 2021. Available at: <http://www.indepaz.org.co/cifras-de-violencia-policial-en-el-paro-nacional/> (last accessed on 10 May 2021).

² See, e.g.: El Espectador, *Paro Nacional en Cali: Policía confirma que del camión sí se bajaron agentes vestidos de civiles* (7 May 2021), available at: <https://www.elespectador.com/noticias/judicial/paro-nacional-en-cali-policia-confirma-que-del-camion-si-se-bajaron-agentes-vestidos-de-civiles/>

³ INDEPAZ, *Víctimas de violencia homicida en el marco del paro nacional*. Available at: <http://www.indepaz.org.co/victimas-de-violencia-homicida-en-el-marco-del-paro-nacional/> (last accessed on 10 May 2021).



committed by the police in the country.⁴ These figures provide first indications of the systematicity in the attacks against protestors and the insufficient oversight of the Colombian authorities to take measures that prevent the further commission of these crimes.

Moreover, serious questions remain on judicial independence and effectiveness in Colombia. Many cases of police brutality, including murder, are unlawfully investigated and tried under the jurisdiction of military courts and end up dismissed without sufficient investigation and prosecution. Overall, where the General Attorney's Office (*Fiscalía General de la Nación*) has begun investigations, it has failed to report significant progress in the majority of the cases. For instance, impunity rates for murders allegedly committed by the police between 2017 and 2019 are estimated to be around 99%.⁵

In this context, we want to bring these allegations to your attention, encouraging you to look closely into these matters to determine whether they may amount to crimes under the Rome Statute, particularly crimes against humanity, fitting into the preliminary examination your Office currently has on Colombia. The current situation in Colombia may warrant a similar analysis to the preliminary examination in Venezuela, particularly taking into consideration the high number of allegations of crimes including murder, rape, enforced disappearances and others in such a short span of time and the patterns of conduct of police forces. For instance, your Office has already looked into the violence by Venezuelan security forces in the context of demonstrations and political unrest, particularly the alleged 70 killings in protests between April and July 2017 and the additional 30 to 47 deaths in protests between 21 and 25 January 2019 allegedly committed by security forces and/or armed civilians acting in sporadic coordination with security forces.⁶

An acknowledgment from your Office in this regard would have a strong signaling effect to the Colombian government and may contribute to prevent further crimes and an effective investigation of these allegations.

As usual, we remain at your disposal to provide any additional information or discuss in detail, along with other relevant stakeholders, the contents of this letter.

Kind regards,

Andreas Schüller & Silvia Rojas Castro
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⁴ Temblores ONG. *Bolillo, Dios y Patria*. Available at: https://4ed5c6d6-a3c0-4a68-8191-92ab5d1ca365.filesusr.com/ugd/7bbd97_f40a2b21f9074a208575720960581284.pdf

⁵ Id., p. 63.

⁶ Office of the Prosecutor. *Report on Preliminary Examination Activities (2019)*, para. 76.



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